



- 1 -

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	:	Before the Examiner:
Kardis et al.	:	Aminzay, Shaima Q.
	:	
Serial No.: 09/912,779	:	Group Art Unit: 2684
	:	
Filing Date: July 25, 2001	:	
	:	
Title: PERSONAL	:	IBM Corporation
COMMUNICATION DEVICE	:	P.O. Box 12195
HAVING A BUILT-IN	:	Dept. 9CCA, Bldg. 002-2
PROJECTION DISPLAY	:	Research Triangle Park, NC 27709

APPEAL BRIEF

Mail Stop Appeal Brief-Patents
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

I. REAL PARTY IN INTEREST

The real party in interest is International Business Machines, Inc., which is the assignee of the entire right, title and interest in the above-identified patent application.

CERTIFICATION UNDER 37 C.F.R. §1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on July 19, 2005.


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Wanda Kellar
 (Printed name of person certifying)

07/22/2005 MWOLDGE1 00000017 09912779

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01-FC:1402 500.00 DA

07/22/2005 MWOLDGE1 00000017 500563 09912779

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, Appellants' legal representative or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1, 3-8 and 10-14 are pending in the Application. Claims 3-8 and 10-12 are allowed. Claim 14 is objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 13 stands rejected. Claim 13 is appealed.

IV. STATUS OF AMENDMENTS

Appellants submitted an amendment filed on May 23, 2005 after the final rejection that rewrites claim 14, which was objected to as being dependent upon a rejected base claim, in independent form thereby placing the application in better form for appeal. As of the time of filing this Appeal Brief, Appellants have not received an advisory action from the Examiner indicating that the amendment was entered. However, Appellants assume that the Examiner entered such an amendment pursuant to 37 C.F.R. §1.116 and M.P.E.P. §714.13.

V. SUMMARY OF CLAIMED SUBJECT MATTER

In one embodiment of the present invention, a personal communication device comprising a dual mode display for a user's viewing in both a direct-view mode, where sufficiently-sized characters are displayed in a manner visible to the user without further magnification. Specification, page 6, lines 12-27; Specification, page 7, lines 21-27; Figure 1A, element 101; Figure 1B, element 101; and Figure 4,

element 101. The personal communication device further comprises a “projection-view” mode, where more content can be displayed over that of the direct-view mode. Specification, page 7, lines 1-11; Specification, page 8, lines 1-12; Figure 1C, element 101.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claim 13 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Takahashi (U.S. Patent No. 6,662,244) in view of Novis et al. (U.S. Patent No. 5,867,795) (hereinafter "Novis").

VII. ARGUMENT

A. Claim 13 is not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Takahashi in view of Novis.

The Examiner has rejected claim 13 under 35 U.S.C. §103(a) as being unpatentable over Takahashi in view of Novis. Paper No. 7, page 2. Appellants respectfully traverse these rejections for at least the reasons stated below.

1. The Examiner has not provided any objective evidence or sufficient motivation for combining Takahashi with Novis.

A *prima facie* showing of obviousness requires the Examiner to establish, *inter alia*, that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention, and the Examiner must provide a motivation or suggestion to combine or modify the prior art reference to make the claimed inventions. M.P.E.P. §2142. The showings must be clear and particular and supported by objective evidence. *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 50 U.S.P.Q.2d. 1614,

1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

The Examiner admits that Takahashi does not teach "wherein sufficiently-sized characters are displayed in a manner visible to the user without further magnification" as recited in claim 13. Paper No. 7, page 3. The Examiner modifies Takahashi with Novis to include the above-cited claim limitation "to provide a portable electronic device including a visual image display that contains safe features to prevent unwarranted viewing and easy to operable, and displays enlarged sized characters that is not going to need further magnification (Novis, column 2, lines 14-15, and lines 30-38, column 8, lines 31-39)." Paper No. 7, pages 3-4. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

The Examiner's motivation does not address as to why one of ordinary skill in the art with the primary reference (Takahashi) in front of him would have been motivated to modify Takahashi with the teachings of the secondary reference (Novis). The Examiner's motivation appears to be motivation to solve the problem in Novis but not motivation for modifying Takahashi to display sufficiently-sized characters in a manner visible to the user without further magnification in a direct-view mode, as required to establish a *prima facie* case of obviousness. M.P.E.P. §2143.

Novis teaches that there exists a need to integrate a smart card interface, as well as a cellular transceiver, and a visual display into a portable electronic device, while maintaining portability and ease in carrying the device. Column 1, lines 61-63. Novis further teaches that this type of portable electronic device would allow the user to conduct numerous types of secure wireless commercial, financial and service related transactions utilizing the smart card and exiting wireless technology. Column 1, lines 63-67. Novis further teaches that the purpose of the present invention is to

perform transactions utilizing a smart card, which contains safe features to prevent unwarranted viewing and use of the information and the smart card. Column 2, lines 12-15 (Examiner cites this passage as support for his motivation). Novis further teaches that the problems presented in the Background section of Novis and others are at least partially solved and that the purposes presented in the Background section of Novis and others are realized in a portable electronic device including a visual image display...the visual image display includes a data input terminal designed to receive image data thereon. Column 2, lines 29-37 (Examiner cites this passage as support for his motivation). Novis further teaches that Figure 11 is a 4x magnified view in side elevation of portions of a display (element 60) of Figure 8. Column 8, lines 31-32. (Examiner cites this passage as support for his motivation). Hence, the passages cited by the Examiner in Novis are directed to solving the problems of Novis, such as integrating a smart card interface with a cellular transceiver along with a visual display into a portable electronic device which would allow a user to conduct secure wireless commercial, financial and service related transactions.

This, however, does not address as to why one of ordinary skill in the art would modify Takahashi to have a communications device having a mode of operation to display sufficiently-sized characters in a manner visible to the user without further magnification. The Examiner has not provided any connection with the cited passages in Novis with modifying Takahashi to have a communications device having a mode of operation to display sufficiently-sized characters in a manner visible to the user without further magnification. The Examiner must provide a suggestion or motivation, either in the references or in the knowledge generally available to one of ordinary skill in the art to modify Takahashi to have a communications device having a mode of operation to display sufficiently-sized characters in a manner visible to the user without further magnification. M.P.E.P. §2143. As the Examiner has not provided such motivation, but instead relies upon his own subjective opinion, the Examiner has not presented a *prima facie* case of

obviousness in rejecting claim 13. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002); M.P.E.P. §2143.

B. Takahashi and Novis, taken singly or in combination, do not teach or suggest the following limitations.

Appellants respectfully assert that Takahashi and Novis, taken singly or in combination, do not teach or suggest "a personal communication device comprising a dual mode display for a user's viewing in both a direct-view mode, wherein sufficiently-sized characters are displayed in a manner visible to the user without further magnification, and in 'projection-view' mode, wherein more content can be displayed over that of the direct-view mode" as recited in claim 13. The Examiner cites column 1, lines 6-14 and Figures 3-4 of Takahashi as teaching a personal communication device comprising a dual mode display. Paper No. 7, page 2. The Examiner further cites column 4, lines 58-67 of Takahashi as teaching a "closed state" which allegedly teaches a direct-view mode. Paper No. 7, page 3. The Examiner further cites column 4, lines 46-57 and 62-67 and column 5, lines 11-22 of Takahashi as teaching an "open state" which allegedly teaches the projection-view mode. Paper No. 7, page 3. The Examiner further cites column 8, lines 31-39 and Figure 11 of Novis as teaching "enlarging the size of the characters so the information displays without further magnification." Paper No. 7, page 3. Appellants respectfully traverse.

Takahashi instead teaches that in the open state of the portable telephone set, the input/display section is visible to the user and the user can see the information on the transmission type LCD. Column 4, lines 46-49. Takahashi further teaches that in the closed state of the portable telephone set, the input/display section no longer operates because the power supply to the transmission type LCD is suspended. Column 4, lines 58-62. Takahashi further teaches that in the closed state of the portable telephone set, since the input/display section becomes transparent and is

located at a position suitable for the user to see the information displayed on the display section therethrough, the information displayed on the display section is clearly visible to the user. Column 4, lines 62-67. Takahashi further teaches that in the closed state of the portable telephone set, the input/display section becomes transparent. Column 5, lines 11-13. Takahashi further teaches that since the input/display section is located at a position suitable for the user to see the information displayed on the display section therethrough, the information displayed on the display section is clearly visible to the user through the input/display section. Column 5, lines 13-16. Takahashi further teaches that in the closed state of the portable telephone set, the user can see the current time and/or the current condition of radio-wave propagation displayed on the display section without turning the second housing relative to the first housing to bring the portable telephone set into the open state. Column 5, lines 17-22. Thus, Takahashi teaches that in the open state, the input/display section of the portable telephone set is visible to the user and the user can see the information on the transmission type LCD. Takahashi further teaches that in the closed state, the input/display section becomes transparent and is located at a position suitable for the user to see the information displayed on the display section therethrough. There is no language in the cited passages that teaches that in the open state (Examiner asserts that the open state, as taught in Takahashi, corresponds to the projection-view mode) that more content can be displayed over that of the closed state (Examiner asserts that the closed state, as taught in Takahashi, corresponds to the direct-view mode). Instead, Takahashi simply teaches that in the closed state, the input/display section becomes transparent and the user can see the information displayed on the display section therethrough. Hence, Takahashi teaches that the amount of content displayed in the closed mode is the same as the amount of content displayed in the open state. Figure 3 of Takahashi illustrates the amount of content displayed in the open state (Examiner asserts that the open state, as taught in Takahashi, corresponds to the projection-view mode). Figure 4 of Takahashi

illustrates the amount of content displayed in the closed state (Examiner asserts that the closed state, as taught in Takahashi, corresponds to the direct-view mode). As illustrated in Figures 3 and 4, the amount of content displayed in the open state is the same as the amount of content displayed in the closed state. Hence, Takahashi does not teach or suggest that in the projection-view mode that more content can be displayed over that of the direct-view mode. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claim 13, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Furthermore, as stated above, the Examiner cites to column 8, lines 31-39 of Novis as teaching "enlarging the size of the characters so the information displays without further magnification." Paper No. 7, page 3. Appellants respectfully direct the Board's attention to the claim language recited above which recites in part "wherein sufficiently-sized characters are displayed in a manner visible to the user without further magnification." There is no language in claim 13 that states "enlarging the size of the characters." The Examiner is adding claim limitations not found in claim 13. All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970). The Examiner is required to cite a reference or combination of references that teaches or suggests all of the claim limitations. M.P.E.P. §2142. Since the Examiner has not cited a reference or combination of references that teaches the limitation of "wherein sufficiently-sized characters are displayed in a manner visible to the user without further magnification," the Examiner has not established a *prima facie* case of obviousness in rejecting claim 13. M.P.E.P. §2143.

If, however, the Examiner is citing column 4, lines 58-67 of Takahashi as teaching "wherein sufficiently-size characters are displayed in a manner visible to the

user" and citing column 8, lines 31-39 and Figure 11 of Novis as teaching "displaying characters visible to the user without further magnification", then Appellants respectfully traverse as follows.

The cited passage in Novis (column 8, lines 31-39) teaches that Figure 11 is a 4x magnified view in side elevation of portions of a display (element 60) of Figure 8. Column 8, lines 31-32. There is no language in the cited passage that teaches displaying characters visible to the user without further magnification as recited in claim 13. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claim 13, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

VIII. CONCLUSION

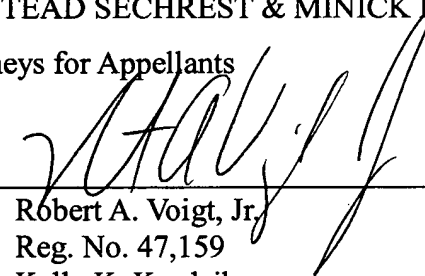
For the reasons noted above, the rejection of claim 13 is in error. Appellants respectfully request reversal of the rejection and allowance of claims 1, 3-8 and 10-14.

Respectfully submitted,

WINSTEAD SECHREST & MINICK P.C.

Attorneys for Appellants

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APPENDIX

1. A communications device having first and second modes of operation, where in the first mode of operation a display built into the device displays information for direct viewing by a user, and where in the second mode of operation the display built into the device projects information onto a reflective surface for viewing by the user, wherein the first mode of operation the display displays the information at such a size that the information is legible when viewed directly by the user, and wherein the second mode of operation the display projects the information onto the reflective surface at a size larger than when the information is displayed for direct viewing by the user.

3. The communications device as recited in claim 1, wherein the information projected onto the reflective surface appears as if it were being displayed by a display device larger than the display.

4. The communications device as recited in claim 1, wherein the first mode of operation the display is viewable by the user through a window in a cover while in a closed position, and wherein the second mode of operation the cover is in an open position.

5. The communications device as recited in claim 4, wherein the information is also viewable directly by the user with the cover in the open position.

6. The communications device as recited in claim 1, further comprising an input device that permits input by the user when in either the first or second modes of operation.

7. The communications device as recited in claim 1, wherein the device is a

telephone that permits the user to conduct a conversation while also viewing the display.

8. A personal communications device comprising:
 - a main body having a built in display;
 - a cover hingably attached to the main body, wherein the display is viewable by a user through an opening in the cover when the cover is in a closed position with respect to the main body;
 - a reflective surface attached to the main body for reflecting images projected by the display when the cover is in an open position with respect to the main body;
 - and
 - wireless telephone circuitry for permitting the user to conduct a telephone conversation, including a speaker in the cover and a microphone, wherein the user can view the images projected onto the reflective surface while holding the device to a side of the user's face to conduct the telephone conversation.
10. The device as recited in claim 8, wherein the reflective surface and the display are both hingably attached to the main body and are hinged to open positions for projection of the images from the display to the reflective surface.
11. The device as recited in claim 10, wherein the images are rotated 90 degrees when projected onto the reflective surface from an orientation when displayed by the display when it is in a closed position.
12. The device as recited in claim 8, further comprising:
 - an input device for moving and selecting items displayed on the display by the user.
13. A personal communication device comprising a dual mode display for a user's

viewing in both a direct-view mode, wherein sufficiently-sized characters are displayed in a manner visible to the user without further magnification, and in “projection-view” mode, wherein more content can be displayed over that of the direct-view mode.

14. A personal communication device comprising

a dual mode display for a user’s viewing in both a direct-view mode, wherein sufficiently-sized characters are displayed in a manner visible to the user without further magnification, and in “projection-view” mode, wherein more content can be displayed over that of the direct-view mode; and

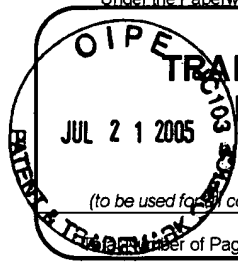
a tri-mode display for a user’s viewing in both an open direct-view mode, wherein sufficiently-sized characters are displayed in a manner visible to the user without further magnification when a lid is in an open position, a closed direct-view mode, wherein sufficiently-sized characters are displayed in a manner visible to the user without further magnification when the lid is in a closed position, and in “projection-view” mode, wherein more content can be displayed over that of direct-view mode.

AF *zhu*

PTO/SB/21 (09-04)

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TRANSMITTAL FORM

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Application Number	09/912,779
Filing Date	7/25/2001
First Named Inventor	Kardis et al.
Art Unit	2684
Examiner Name	Shaima Q. Aminzay
Attorney Docket Number	RPS920000402US2 (7036-P168US)
Number of Pages in This Submission	17

ENCLOSURES (Check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): 1) Postcard
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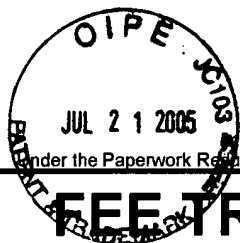
Firm Name	Winstead Securities & Minick P.C.		
Signature	<i>Robert A. Voigt, Jr.</i>		
Printed name	Robert A. Voigt, Jr.		
Date	July 19, 2005	Reg. No.	47,159

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FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 500.00

Complete if Known

Application Number	09/912,779
Filing Date	7/25/2001
First Named Inventor	Kardis et al.
Examiner Name	Shaima Q. Aminzay
Art Unit	2684
Attorney Docket No.	RPS920000402US2 (7036-P168US)

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

☒ Deposit Account:

Deposit
Account
Number
Deposit
Account
Name

50-0563

IBM Corporation

The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments

☒ Charge any additional fee(s) or any underpayment of fee(s)

☐ Charge fee(s) indicated below, except for the filing fee
to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)					(\$ 0.00

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

		Extra Claims		Fee from below		Fee Paid
Total Claims		-20** =		X		
Independent Claims		-8** =		X		
Multiple Dependent						

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, if not paid
1204	86	2204	43	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$ 0.00

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	500.00
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 500.00

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Name (Print/Type)	Robert A. Voigt, Jr.	Registration No. (Attorney/Agent)	47,159	Telephone	512.370.2832
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